

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 4719
DATE COMPLAINT FILED: 9/11/97
DATE OF NOTIFICATION: 9/17/97
DATE ACTIVATED: 1/16/98

STAFF MEMBER: Susan L. Lebeaux

COMPLAINANT: Renee Steinhagen, Executive Director of the Public Interest Law Center of New Jersey

RESPONDENTS: New Jersey Republican State Committee
and H. George Buckwald, as Treasurer

RELEVANT STATUTES: 2 U.S.C. § 441a
2 U.S.C. § 441b
11 C.F.R. § 102.5(a)
11 C.F.R. §§ 106.5(d) and (g)

INTERNAL REPORTS CHECKED: Disclosure Reports and FEC Indices

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by a complaint filed on September 11, 1997 by Renee Steinhagen, Executive Director of the Public Interest Law Center of New Jersey.¹ The complainant alleges that, based on information contained in its report to the FEC for the period

¹ The complaint in this matter was originally designated as MUR 4674, and concerned the allocation activities of both the New Jersey Republican State Committee and the New Jersey Democratic State Committee. On February 13, 1998, in response to this Office's recommendation to sever, the Commission voted to open a MUR comprising only the activity of the New Jersey Republican State Committee and H. George Buckwald, as Treasurer. The activities of the New Jersey Democratic State Committee and its treasurer were handled separately in MUR 4674. In that matter, while recommending that the Commission find reason to believe that a violation occurred involving failure to file a Schedule H1, this Office took the position that the New Jersey Democratic State Committee correctly calculated its ballot composition ratios in 1995 and 1996. On April 13, 1998, the Commission found reason to believe the filing violation occurred but took no further action and closed the file in MUR 4674.

from November 26, 1996 to December 31, 1996, the New Jersey Republican State Committee (the "Committee") miscalculated the ratio used to allocate its administrative and generic voter drive expenses for shared federal and nonfederal activity during 1996. The complainant believes that as a result of the alleged miscalculation, the Committee made overpayments from its nonfederal account to reimburse its federal account for expenditures allocable to nonfederal purposes, and that funds which failed to meet the prohibitions and limitations of the Federal Election Campaign Act of 1971, as amended (the "Act") "may have been used improperly to benefit federal candidates." In a joint response, the Committee and its treasurer explained the purported factual and legal rationales underlying the Committee's calculation of the allocation ratio for 1996, and requested that the Commission dismiss the complaint. A key issue in this matter is whether, in calculating its ratios, the Committee could permissibly assign nonfederal points to account for elections for State Senate or State Representative seats held in single legislative districts. As discussed infra, this Office believes that the Committee could not permissibly do so, and that for that and other reasons, it miscalculated the ratios used to allocate its administrative and generic voter drive expenses during 1995 and 1996.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

An organization which is a political committee under the Act must follow prescribed allocation procedures when financing political activity in connection with federal and nonfederal elections. 11 C.F.R. §§ 102.5 and 106.5(g). These rules implement the contribution and expenditure limitations and prohibitions established by 2 U.S.C. §§ 441a and 441b.

A party committee, such as the Committee, that has established separate federal and nonfederal accounts, must make all disbursements, contributions, expenditures and transfers in connection with any federal election from its federal account. 11 C.F.R. § 102.5(a)(1)(i). Only funds subject to the limitations and prohibitions of the Act shall be deposited in the separate federal account. Id. No transfers may be made to the federal account from any other accounts maintained by the committee for the purposes of financing nonfederal activity, except as provided in 11 C.F.R. § 106.5(g). Id. The Act prohibits corporations and labor organizations from making contributions in connection with federal elections, and prohibits political committees from knowingly accepting such contributions. 2 U.S.C. § 441b(a). Moreover, the Act provides that no person shall make contributions to a state committee's federal account in any calendar year which in the aggregate exceed \$5,000, and prohibits the state committee from knowingly accepting such contributions. 2 U.S.C. §§ 441a(a) and (f).²

Pursuant to 11 C.F.R. § 106.5(g)(1)(i), state party committees that have established separate federal and nonfederal accounts must pay the entire amount of an allocable expense from the federal account and shall transfer funds from the nonfederal to the federal account solely to cover the nonfederal share of that allocable expense. Further, such committees must allocate both their administrative and generic voter drive expenses between their federal and nonfederal accounts using the "ballot composition method." 11 C.F.R. § 106.5(d). While the allocation ratio generally is calculated at the beginning of a two-year election cycle, in states such as New Jersey that hold federal and nonfederal elections in different years, state committees must allocate generic voter drive costs by applying the ballot composition method to the calendar

² During the 1995-96 election cycle, New Jersey permitted individuals, corporations and labor organizations to contribute \$25,000 to state political party committees. N.J. Stat. Ann. § 19:44A-11.4 (1995 and 1996).

year in which the election is held. 11 C.F.R. § 106.5(d)(2). Administrative costs are still allocated according to the ballot composition ratio based on the two-year federal election cycle. Id.

Under the ballot composition method, a state committee allocates its administrative and generic voter drive expenses based on the ratio of federal offices expected on the ballot to total federal and nonfederal offices expected on the ballot in the next general election to be held in its state. 11 C.F.R. § 106.5(d)(1)(i). In calculating a ballot composition ratio, a state committee shall count the federal offices of President, United States Senator, and United States Representative, if expected on the ballot in the next federal election, as one federal office each. The committee shall count the nonfederal offices of Governor, State Senator, and State Representative, if expected on the ballot in the next general election, as one nonfederal office each, and shall count the total of all other partisan statewide executive candidates, if expected on the ballot in the next general election, as a maximum of two nonfederal offices. Further, the committee shall also include in the ratio one additional nonfederal office if any partisan local candidates are expected on the ballot in any regularly scheduled election during the two-year federal election cycle. Finally, state committees shall also include in the ratio one additional nonfederal office. 11 C.F.R. § 106.5(d)(1)(ii).

B. Factual Background

1. Introduction

The complainant alleges that based on analysis of the information submitted to the FEC for the period from November 26, 1996 to December 31, 1996, the Committee miscalculated the ratio used to allocate its administrative and generic voter drive expenses for shared federal and

nonfederal activity during 1996, raising the possibility that impermissible funds from the nonfederal account thereby may have been transferred to the federal account. Because the allocation ratio for shared administrative costs should have been calculated in 1995 for the two year election cycle, see 11 C.F.R. §106.5(d), this Office has examined the Committee's allocation ratios for the two-year period.

2. The Committee's Calculations of the Ballot Composition Ratios

a. Generic Voter Drive Expenses

The Committee's 1995 Schedule H1 for shared federal and nonfederal generic voter drive expenses showed a 0% federal allocation, since there were no federal elections held that year.³ In 1996, in calculating its ballot composition ratio for shared generic voter drive expenses, the Committee took one point each for the President, U.S. Senate, and U.S. House races. See 11 C.F.R. § 106.5(d)(1)(ii). With respect to the New Jersey elections, the Committee took one point each for the categories of State Senate, State Representative, and local candidates, and the extra nonfederal point. See id. Based on its calculated ratio of the total of federal offices (3) to the total federal and nonfederal offices (7), the Committee's 1996 allocation was 42.86% federal and 57.14% nonfederal.

The Committee's reporting of transfers from the nonfederal account to the federal account do not distinguish between generic voter drive and administrative expenses. Specifically, the Committee's 1996 Schedules H3 showing the transfers all show one dollar figure on the combined "Admin/Voter Drive" line on the form, and it is not possible to separate

³ While this Office does not believe that the Committee properly assigned points to its ballot composition ratio in calculating the allocation, since the right result was reached--0% federal allocation--it has not further pursued this aspect of the Committee's activity.

out which transfers relate to which of the two categories. Looking at the disbursements on the Committee's 1996 Schedules H4, the Committee appears to have attributed all of the shared administrative and generic voter activity to the "administrative" category, even when the purpose of some of the disbursements are denoted as for GOTV activities. For purposes of this matter, this Office has separated out those disbursements that are denoted as for GOTV activities, amounting to \$50,460 in 1996, and assumed the Committee applied the allocation ratio of 42.9% federal/57.1% nonfederal when transferring nonfederal funds to the federal account to cover these expenses. Under this methodology, the Committee transferred \$28,813 to the federal account in 1996 for the nonfederal portion of shared generic voter drive expenses. See Attachment 1 (chart prepared by this Office which includes the Committee's allocation activity in 1995-1996 for administrative and generic voter drive expenses).

b. Administrative Expenses

In 1995, the Committee, in calculating its ballot composition ratio for shared administrative expenses, took one point each for the U.S. Senate and U.S. Congress races, but none for the Presidential race, even though there was a general election for President expected in 1996, within the two-year election cycle to be covered by the calculation. With respect to New Jersey elections, the Committee originally took one point each for the State Senate and State Representative categories, two points for the local candidates category and the extra non-federal point. Based on its calculation of the ratio of federal offices (2) to the total of federal and nonfederal offices (7), the Committee's original allocation was 28.57% federal and 71.43% nonfederal, and a review of the Committee's transfers shows that during 1995 it allocated approximately 28.6% of its shared administrative expenses to the federal account. In March

1996, in response to a March 6, 1996 Request for Additional Information from the Reports Analysis Division ("RAD") stating that the Committee was permitted to take only one point, not two points, for the local candidates category, the Committee filed an amended Schedule H1 for shared administrative expenses, showing a federal allocation of 33.33%, and made a corresponding corrective transfer of \$39,848 from its federal to its nonfederal account.

As discussed previously, the ballot composition ratio for shared administrative expenses is supposed to remain constant for both years of the two-year election cycle. See 11 C.F.R. § 106.5(d)(2). A review of the Committee's transfers, however, shows that it used an allocation ratio of 42.9% federal/57.1% nonfederal for shared administrative expenses during 1996--the same ratio used for shared generic voter drive expenses during 1996. In all, the Committee had \$4,117,467 in shared administrative expenses in 1995 and 1996, and, based on the allocation ratios discussed above, transferred-in \$2,570,936 to its federal account for the nonfederal portion of those administrative expenses.⁴ See Attachment 1.

Since the proper application of the ballot composition method depends on the actual election expectations facing a committee in its particular state, before discussing the Committee's response to the Complaint, and this Office's analysis, it is necessary to set forth the election situation in New Jersey in the relevant time-period.

3. New Jersey Elections in 1995 and 1996⁵

The New Jersey legislature consists of two houses: a 40-member Senate and an 80-member General Assembly. Legislators are elected from 40 legislative districts. The voters in

⁴ This figure does not include the \$28,813 transferred-in for generic voter drive expenses. See discussion supra.

⁵ The discussion in this section is drawn from the complaint, the response of the Committee and its treasurer, New Jersey statutes, and public information obtained from the Internet and from the office of the New Jersey Director of Elections.

each district elect one Senator and two members of the General Assembly. Legislative elections are held in November of each odd-numbered year. General Assembly members serve two-year terms, and Senators serve four year terms, except for the first term of a new decade, which is only two years. Interim appointments are made to fill vacant legislative seats, and the office is on the ballot for the next general election, unless the vacancy occurred within 51 days of the election, in which case the appointment stands until the following general election.

In 1995, the general election was held on November 7. At that time, in addition to local races, all of the General Assembly seats were up for election as well as a single vacant Senate seat in District 5, due to the death of the incumbent.⁶ In 1996, the general election was held on November 5. In addition to local races, there was one vacant Assembly seat in District 21 on the ballot, due to the death of the incumbent in March 1996. While a State Senator in District 8 died in December of 1996, this occurred after the general election, and that seat was filled by interim appointment until the next general election in 1997.

C. Analysis

The complainant alleges that in calculating the ballot composition ratio, a state party committee can allocate one nonfederal point each for the State Senate and State Representative (Assembly) categories only if candidates for all State Senate or State Assembly seats are expected on the ballot.⁷ In 1996, since there was only the election for one vacant State Assembly seat in District 21, in addition to several local and municipal elections, the complainant averred

⁶ While the New Jersey elections office did not have the exact date of the incumbent's death, it must have been before February 1995 when its records showed an interim appointment for the vacant seat was made. The next general election for all State Senate seats was in 1997.

⁷ As support for this proposition, the complainant points to page 48 of the FEC Campaign Guide for Political Party Committees which explains the ballot composition method, and which indicates that one nonfederal point may be taken for "State Senator (all seats)" and/or "State Representative (all seats)."

that the Committee erred in allocating one nonfederal point for each of the offices of State Senate and State Assembly in 1996. Instead, according to the complainant, the proper federal allocation was 60%, based on the ratio of 3 federal points to 5 total points, with the two nonfederal points being assigned to the local candidates and the extra nonfederal point categories.⁸

1. The Committee's Response

In a joint response of the Committee and its treasurer (hereinafter, collectively "the Committee") dated November 5, 1997 ("Response"), the Committee explained its factual rationale for allocating one nonfederal point for each of the offices of State Senate and State Assembly in its 1996 Schedule H1. According to the Committee, "in 1996, two vacancies occurred which impacted the formula." One vacancy was in the office of State Assembly for the 21st Legislative District due to the death of Assemblyman Lustbader, filled by an election in November 1996. The other vacancy occurred in the office of State Senator for the 8th Legislative District due to the death of Senator Haines, and the seat was filled by interim appointment due to the proximity of the vacancy to the November election. The Committee further stated that at the time of the allocation (January 24, 1996), Charlene Hooker, the Committee's Director of Operations, corresponded with RAD, requesting its review and comments on the allocation methodology, but that the Committee had not received a response. Response, pages 1-2.

The committee attached a "Certification of Charlene Hooker" to its response. To her certification, Ms. Hooker attached a copy of the Committee's 1996 Schedule H1, showing the

⁸ It appears that the complainant is alleging that the same 60% federal/40% nonfederal ratio should apply to not only the Committee's 1996 generic voter expenses but also to its administrative expenses. To the extent this is the complainant's view, it is inconsistent with the regulatory scheme which requires, in states like New Jersey, a two-year ballot allocation ratio for administrative expenses. See discussion supra.

42.86% federal allocation, and a copy of the letter referenced above. The January 24, 1996 letter stated in relevant part: "Our concern is that we comply with FEC regulations by using the years 1995 and 1996 for this allocation. Could you please review this schedule and the allocations and confirm that we are indeed using the correct years." In her certification, in addition to stating she had sent the letter, Ms. Hooker stated that she also had spoken with a RAD analyst on March 18, 1996, who, Ms. Hooker says, confirmed that the Committee could take a nonfederal point for "deceased Senator Haines" and that the Committee was using the correct allocation. Response, pages 6-9.

In its legal analysis, the Committee stated that contrary to the complainant's assertion, "[t]he entitlement to a non-federal point is not predicated upon vacancies in all of the legislative offices. One vacancy in one office at a specific legislative level is sufficient." The Committee therefore concluded that "[c]learly, the vacancies left by both State Senator Haines and Assemblyman Lustbader entitled [the Committee] to take an additional point for each office." In support, the Committee relies on AO 1991-25, in which the Commission concluded that the state committee should add a federal point to the ballot composition ratio for generic voter drive activity for the period between U.S. Senator Heinz's death and the special election to fill his seat, and on AO 1991-6, in which the Commission concluded that the state committee should include a federal point for each U.S. Senate seat in the November 1992 general election, in circumstances where both California U.S. Senate seats were up for election. Response, pages 2-5.

In its conclusion, the Committee requested that the Commission dismiss the complaint because the ballot composition ratio was calculated correctly, and even if it was not, the Committee had given notice to a representative of the Commission and asked for a response if

there were problems. Referencing two AOs, the Committee also stated that “[i]n instances where the miscalculation was made in good faith, the Commission has allowed a transfer of balances between accounts within 30 days to reflect the proper ratio.” Response, page 5.

2. The Committee’s Miscalculation of the Ballot Composition Ratios

a. Generic Voter Drive Expenses

The Committee’s 1996 Schedule H1 should have reflected the ratio applicable only to the allocation of the costs of shared generic voter drive expenses based on the 1996 ballot composition method calculation, while the allocation for administrative expenses should have been based on a ratio calculated in 1995 for the two year Congressional election cycle. 11 C.F.R. § 106.5(d)(2). However, even if the Committee had applied the 1996 Schedule H1 ratio only to its generic voter drive expenses, this Office has concluded, as discussed below, that the Committee would have impermissibly transferred funds from its nonfederal account to its federal account based on a 42.86% federal/57.14% nonfederal ratio. The correct allocation for the shared generic voter drive expenses in 1996 was 60% federal/40% nonfederal, based on the assignment of only two nonfederal points, one each to the local candidates and extra nonfederal point categories. See MUR 4674 (New Jersey Democratic State Committee correctly determined that 60% of all 1996 generic voter drive expenses would be paid for with federal dollars, and the other 40% would be paid for with nonfederal dollars). In other words, the Committee incorrectly assigned points to the State Senate and State Representative categories.

The Commission’s rationale in adopting the ballot composition method leads to the conclusion that a state committee cannot include a nonfederal point in its ballot composition ratio

to account for an election of a State Senator or State Representative seat in a single legislative district. The analysis starts with the Commission's Explanation and Justification ("E&J") for 11 C.F.R. § 106.5(d), in which it stated that it was taking an "average ballot" approach, whereby "committees are to calculate a ballot composition ratio according to the ballot which an average voter would face in that committee's state or geographic area, rather than basing the ratio on the aggregates of all federal and all non-federal races on the ballot." 55 Fed. Reg. 26058, 26064 (June 26, 1990). In 1992, the Commission revised 11 C.F.R. § 106.5(d) to permit all state and local committees to add an additional nonfederal point in computing ratios using the ballot composition method in order to compensate for underrepresentation of nonfederal offices in the then-current formula. In discussing the various comments received in response to its Notice of Proposed Rulemaking concerning the proposed additional point, the Commission noted that "the ballot composition ratio was never anticipated to precisely reflect all state and local party activity in all states in all election cycles. It believes that the formula's use of the 'average ballot concept,' which reflects variations in different states and localities in each election, as well as the special rules for states that hold statewide elections in non-federal election years, provide the necessary flexibility in this area." 57 Fed. Reg. 8990, 8991 (March 13, 1992).

AO 1991-6, cited by the Committee to support its position, actually points to the opposite outcome. In that matter, the California Democratic Party ("CDP") had asked the Commission, in a case where two U.S. Senate seats would be on the ballot in the November 1992 general election, whether it should count each senatorial election as a separate federal point or treat the two senatorial contests together as one federal point. In concluding that the CDP should include a point for each U.S. Senate seat in calculating its ballot composition ratio, the Commission

pointed to its stated intention in the E&J for 11 C.F.R. § 106.5(d). In adopting the ballot composition method, the Commission explained, its approach reflected the use of an "average ballot" concept in which the number of federal offices counted corresponds to the number of federal candidates the average voter could vote for in the general election. The Commission stated:

Thus, while there will be 52 Congressional races in California in 1992, a voter will only have the opportunity to cast a ballot for the Congressional race in his or her district, and therefore the ballot composition method assigns one point for all Congressional races in the state. In contrast, a U.S. Senate seat, as a state-wide office, appears on all ballots in the state. If two Senate seats are on the ballot in the general election, the average voter will have the ability to vote for candidates for each office.

The Commission's conclusion in AO 1991-6 that the CDP should include a point for each Senate seat rests on the fact that each average voter in California would have the opportunity to vote for two Senators. By analogy, in the present case, only the New Jersey voters in the single legislative districts where the vacant Assembly and Senate seats were located would have had the opportunity to vote for candidates for those seats and the average voter in New Jersey would not. Based on the average ballot concept, no points therefore should be assigned to either the State Representative or State Senator categories.⁹ It would also appear that the Commission's decision in 1992 to permit all committees to include an extra nonfederal point to compensate for

⁹ AO 1991-25, also cited by the Committee, does not support its view that it permissibly assigned points for single-district elections. In that matter, the Commission concluded that when the Pennsylvania state committees could not have known when they calculated their ballot composition ratios in early 1991 that U.S. Senator Heinz would die in April 1991, and a special election would be held to fill that vacancy in November 1991, they should add an additional federal point to the ratio for generic voter drive expenses for the April-November 1991 period. Since under the average ballot approach, all Pennsylvania voters would have had the opportunity to vote for the seat, this advisory opinion does not support the Committee's position. In any event, the Committee appears to have used a 42.86% allocation for both its administrative and generic voter drive expenses for the full 1996 year.

underrepresentation of nonfederal offices would cover situations in which single district elections are necessitated.¹⁰

Even if the Committee's position that a nonfederal point could be applied to a single district election had any merit, it would not permit the Committee to take a nonfederal point in 1996 attributed to the vacancy created by the death of State Senator Haines in December 1996, after the 1996 general election. Section 106.5(d)(1)(ii) explicitly states that a committee should count the nonfederal office of State Senator as one point only "if expected on the ballot in the next general election." Since the Committee had no such expectation in 1996, it was completely unjustified in assigning a point to the State Senate category during that year.¹¹ Moreover, since both incumbents died after January 24, 1996, when Charlene Hooker sent a copy of the Committee's proposed 1996 Schedule H1 to RAD, these events could not have been in contemplation when the Committee composed its 1996 ballot composition ratio.¹² To the extent the Committee is attempting to avoid liability by alleging reliance on RAD to find its mistakes, that attempt should fail; adhering to the Act and the regulations is the responsibility of the Committee and its treasurer, and cannot be shifted onto RAD.¹³ Based on the Committee's

¹⁰ In the 1990 E&J for 11 C.F.R. §106.5(d), the Commission noted that that the new provision generally covered years in which special elections were held, but that the Commission had not tried to address every variation, and that some would have to be determined on a case-by-case basis. 55 Fed. Reg. supra at 26064. In this Office's view, the Commission's adoption of the average ballot concept in the regulation covers the situation at issue here, and the Commission's decision two years later to permit the extra non-federal point is further justification for not making an exception to the general approach.

¹¹ While not permitted under the average ballot concept, had the Committee legitimately thought it could assign a point to the State Assembly seat which became vacant in March 1996, it should have allocated that point only between March and November 1996, and only with respect to shared generic voter drive expenses. See AO 1991-25 and footnote 9 supra.

¹² Additionally, Senator Haines died after Ms. Hooker's conversation with a RAD analyst when she said they discussed counting a point for the vacancy created by his death. This Office understands that the analyst's notes for that conversation do not reflect the points which Ms. Hooker stated were discussed.

¹³ The Committee could have asked the Commission for an advisory opinion, but did not. See 2 U.S.C. § 437f.

disbursements for generic voter drive expenses during 1996 amounting to \$50,460, see discussion supra, and based on a nonfederal share of approximately 57.1% instead of 40%, the Committee transferred in to the federal account \$28,813, instead of the proper \$20,184, an overpayment of \$8,629.¹⁴ See Attachment 1.

b. Administrative Expenses

The Committee also miscalculated the ballot composition ratio for shared administrative expenses for the 1995-1996 cycle. Based on the election situation in New Jersey, the Committee should have taken three federal points, one each for the 1996 Presidential, U.S. Senate and U.S. House races and three nonfederal points, one each for the 1995 State Assembly race in which all the seats were up for election, the local candidates races, and the extra nonfederal point. This calculation would have resulted in a 50% federal allocation, as opposed to the Committee's 28.6% ratio (amended to 33.33%) for 1995, and its use of the 42.86% ratio miscalculated for generic voter drive expenses to apply to administrative expenses as well in 1996. In calculating the ballot composition ratio for 1995, the Committee erred in not taking a federal point for the Presidential election in 1996. See AO 1993-17 (a state party committee must take the maximum number of federal points that are required). The Committee also erred in 1995 by taking two points, instead of one point, for the local candidates category and by assigning one point to the State Senator category. While according to the New Jersey Elections Office, there was one special election for a State Senate seat in District 5 in 1995 due to the death of an incumbent, for the same reasons discussed above, the single non-statewide election did not entitle the Committee to include a corresponding nonfederal point. See MUR 4674 (the New Jersey

¹⁴ All figures in this Report have been rounded to the nearest dollar.

Democratic State Committee's two-year ballot allocation ratio correctly determined that 50% of all administrative expenses would be paid for with federal dollars and the other 50% would be paid for with nonfederal dollars).

As a result of the Committee's miscalculated ballot composition ratios during 1995 and 1996, the Committee made significantly excessive transfers from its nonfederal account to its federal account, and impermissible funds entered the federal campaign process. This Office's review of the Committee's transfers-in to the federal account in 1995 of \$752,149, based on a 28.6% federal/71.4% nonfederal allocation and transfers-in in 1996 of \$1,818,787 based on a 42.9% federal/57.1% nonfederal allocation, for a total of \$2,570,936, when the correct federal/nonfederal allocation in 1995 and 1996 would have been 50% each, shows that the Committee overpaid the federal account \$472,355 for shared administrative expenses in 1995 and 1996.¹⁵ Adding to this figure the Committee's 1996 overpayment to the federal account for generic voter drive expenses of \$8,629, the Committee's total overpayment from the nonfederal to the federal account for shared administrative and generic voter drive expenses in 1995 and 1996 was \$480,984. See Attachment 1.

¹⁵ To reach the \$472,355 figure, this Office used the percentages to calculate a \$512,203 overpayment, then subtracted from that figure the corrective transfer back of \$39,848 which the Committee made when it amended its 1995 H1 in March of 1996 to increase the federal allocation from 28.6% to 33.33%. See Attachment 1 (showing overpayment of administrative and generic voter drive expenses and subtracting corrective transfer from that total to calculate the total non-federal overpayment). In calculating these figures, this Office decided to remove from the administrative category, and add to the generic voter drive category, only those 1996 disbursements (and corresponding transfers-in) denoted as GOTV activities since these were the only ones it could assume with certainty belonged in the latter category, and did not, for example, place in this category almost \$1.2 million in disbursements (and corresponding transfers-in) that were denoted as media purchases. This methodology favors the Committee as there was a greater discrepancy between the proper allocation ratio in 1996 and the one used by the Committee for generic voter drive expenses than between the proper allocation ratio in 1996 and the one used by the Committee for administrative expenses. This Office also did not include \$77,533 paid by the Committee to its federal account in 1997 for administrative/generic voter drive expenses apparently incurred during 1996, another decision which is favorable to the Committee in calculating its overpayment.

c. Conclusion

Because the Committee miscalculated its ballot composition ratios for shared administrative expenses in 1995 and 1996 and for shared generic voter drive expenses during 1996, and improperly overfunded its federal account from its nonfederal account as a result, this Office recommends that the Commission find reason to believe that the New Jersey Republican State Committee and H. George Buckwald, as treasurer, violated 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(g)(1)(i). Additionally, because in 1995 and 1996 the State of New Jersey allowed individuals, corporations, and labor organizations to contribute \$25,000 to state political party committees, N.J. Stat. Ann. § 19: 44A-11.4 (1995 and 1996),¹⁶ this Office recommends that the Commission find reason to believe that the New Jersey Republican State Committee and H. George Buckwald, as treasurer, violated 2 U.S.C. §§ 441a and 441b.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

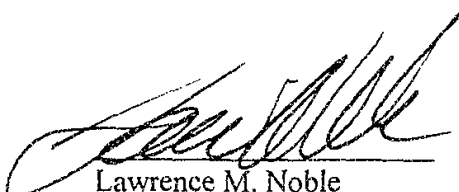
In addition to the recommended reason to believe findings, this Office recommends that the Commission offer to enter into pre-probable cause conciliation with the Committee at this time. Attached is a proposed conciliation agreement

¹⁶ In 1997, New Jersey increased the permissible contribution to state political party committees to \$30,000.

IV. RECOMMENDATIONS

1. Find reason to believe that the New Jersey Republican State Committee and H. George Buckwald, as treasurer, violated 2 U.S.C. §§ 441a and 441b, and 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(g)(1)(i).
2. Enter into pre-probable cause conciliation with the New Jersey Republican State Committee and H. George Buckwald, as treasurer.
3. Approve the attached Factual and Legal Analysis, proposed conciliation agreement and the appropriate letter.

5/26/98
Date


Lawrence M. Noble
General Counsel

Attachments:

1. Chart showing this Office's calculation of the Committee's 1995-1996 nonfederal overpayment
2. Proposed Conciliation Agreement
3. Factual and Legal Analysis

1995-1996 Nonfederal Overpayment

<u>Report</u>	<u>Total Administrative Amount</u>	<u>Actual Federal Administrative Ratio from Schedule H4</u>	<u>Proper Allocation Ratio</u>	<u>Transfer-ins on Sched. H3 for Admin/GVD</u>	<u>Proper Nonfederal Share (50%)</u>	<u>Nonfederal Overpayment</u>
1995 April Quarterly	\$238,696	28.60%	50%	\$169,674	\$119,348	\$50,326
1995 July Quarterly	\$227,350	28.60%	50%	\$156,756	\$113,675	\$43,081
1995 October Quarterly	\$220,511	28.60%	50%	\$159,816	\$110,256	\$49,551
1995 Year End	\$233,721	28.60%	50%	\$265,903	\$116,861	\$149,043
1996 April Quarterly	\$242,248	42.90%	50%	\$119,338	\$121,124	(\$1,786)
1996 12 Day Pre-Primary	\$128,229	42.90%	50%	\$66,132	\$64,115	\$2,018
1996 July Quarterly	\$158,573	42.90%	50%	\$81,751	\$79,287	\$2,465
1996 October Quarterly	\$1,376,490	42.90%	50%	\$625,282	\$688,245	(\$62,963)
1996 12 Day Pre-General	\$340,938	42.90%	50%	\$193,917	\$170,469	\$23,448
1996 30 Day Post-Gen	\$815,521	42.90%	50%	\$459,307	\$407,761	\$51,547
1996 Year End	\$135,190	42.90%	50%	\$273,060	\$67,595	\$205,465
TOTALS:	\$4,117,467			\$2,570,936	\$2,058,734	\$512,203
	<u>GOTV Amount</u>	<u>Voter Drive Fed %</u>	<u>Proper Fed %</u>	<u>Transfer-in</u>	<u>Proper Transfer-in</u>	<u>Nonfederal Overpayment</u>
1996 30 Day Post-Gen	\$50,460	42.90%	60%	\$28,813	\$20,184	\$8,629

NONFEDERAL OVERPAYMENT:

\$520,832

3/12/96 CORRECTIVE TRANSFER:

\$39,848

TOTAL NONFEDERAL OVERPAYMENT:

\$480,984



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/VENESHE FEREBEE-VINES V74
COMMISSION SECRETARY

DATE: MAY 29, 1998

SUBJECT: MUR 4719 - First General Counsel's Report
dated May 26, 1998.

The above-captioned document was circulated to the Commission
on Wednesday, May 27, 1998.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Aikens	—
Commissioner Elliott	<u>XXX</u>
Commissioner McDonald	—
Commissioner McGarry	—
Commissioner Thomas	—

This matter will be placed on the meeting agenda for
Tuesday, June 9, 1998.

Please notify us who will represent your Division before the Commission on this
matter.